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No.

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MICHAEL RODAK, JR.,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

CONFEDERATION LIFE INSURANCE COMPANY,
Petitioner,

v.

HECTOR DE LARA, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner, Confederation Life Insurance Company,[1] prays that a writ of certiorari be issued to review the decision of the Supreme Court of Florida entered in this case.

OPINIONS BELOW

The unreported opinion of the trial court, the Circuit Court for the Eleventh Judicial Circuit of Florida, appears at p. 1a, *infra*. The opinion of the District

[1] Petitioner, styled Confederation Life Association in the courts below, has undergone a change of name and the caption of this petition reflects that change. Petitioner continues to be a mutual insurance company.

Court of Appeal of Florida for the Third District, which is reported at 244 So.2d 539, appears at p. 5a, *infra*. The opinion of the Supreme Court of Florida, which is reported at 257 So.2d 42, appears at p. 7a, *infra*.

JURISDICTION

The opinion of the Supreme Court of Florida was entered on December 1, 1971, and constitutes the judgment of that court. A timely petition for rehearing was denied by that court on February 15, 1971, by an order which appears at p. 11a, *infra*. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3) (1970).

QUESTIONS PRESENTED

1. Whether Florida has violated the Due Process Clause of the Fourteenth Amendment by applying its own local law to enlarge contractual obligations of a foreign company under an insurance contract made in Cuba, covered by reserves located in Cuba, performable by its express terms in Cuba, and insuring the life of a Cuban domiciliary who resided and died in Cuba.

2. Whether Florida has transgressed international law and thus infringed the authority of the Federal Government over foreign affairs by applying local law to a wholly foreign transaction with which Florida has no connection.

3. Whether by disregarding the effect of Cuban currency legislation governing a Cuban contract Florida has acted inconsistently with the act of state doctrine, which this Court has held to be binding in both state and federal judicial proceedings.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the provision of the Fourteenth Amendment of the United States Constitution providing that no state shall "deprive any person of . . . property, without due process of law" and the constitutional authority of the Federal Government over foreign affairs.

STATEMENT

The court below, in direct conflict with decisions of this Court, has impermissibly applied local state law to alter drastically obligations established by foreign law pursuant to a foreign contract between foreign nationals. Unless corrected, the lower court's decision will involve the United States in a breach of international law, result in millions of dollars of unjustified losses to the petitioner and other companies comparably situated, and subject the companies and their employees to sanctions under foreign law.

A. *Factual Background.* For many years prior to 1951, Cuba maintained a highly unusual "dual currency" regime (A. 16, 46-47).[2] Under Cuban law during this period, the United States dollar constituted legal tender in Cuba alongside the Cuban peso (*id.*). Consequently, contracts written in Cuba at this time often specified dollars as the domestic Cuban currency of payment (A. 46).

Petitioner, Confederation Life Insurance Company ("Confederation"), is a Canadian mutual insurance

[2] References designated "A.—" are to the separate appendix filed in the Supreme Court of Florida, containing pertinent extracts from the record. A copy of the separate appendix has been lodged with the Clerk of this Court. References designated "Tr. —" are to the transcript of testimony in the Florida Circuit Court.

company which for many years has provided life insurance in countries throughout the world including Cuba and the United States. In 1938, Confederation, through its Havana office, issued a life insurance policy to German Lopez Sanchez, a Cuban citizen who then resided in Cuba and continued to reside there until his death in 1962 (A. 46, 59). Both Sanchez' application and the policy itself were written in Spanish (A. 59) and the terms of the policy conformed fully with Cuban law, which is the law to which Confederation expected to look in determining rights and obligations under the policy (Tr. 75).

The contract of insurance between Confederation and Sanchez was made in Cuba. Sanchez' application was executed in Cuba (A. 37). The policy was not valid until notarized in Cuba and notarization took place there (Tr. 55-56, 72). Moreover, by the express terms of the application (A. 36), the policy became effective only on its delivery and on payment of the first premium (A. 46), and both of these events occurred in Cuba through Confederation's Havana office (*id.*).[3] The insurance contract was not only made in Cuba but it expressly provided that Cuba was the place of performance of Confederation's obligations:

> "PLACES OF PAYMENT.—All sums payable or exigible [demandable] under this policy shall be

[3] The trial court's findings and conclusions contain the statement that "the place of making of the contract was Toronto, Canada" (p. 3a, *infra*), but the record is devoid of support for this assertion and uncontroverted testimony and documentary evidence show that the contract was made in Cuba (A. 36-37, 46). It appears that the findings and conclusions were drafted by counsel for the claimants in the trial court, and, in any event, an inaccurate legal label cannot alter the record facts or insulate the decision from scrutiny here to protect federal constitutional rights. *E.g.*, *Niemotko* v. *Maryland*, 340 U.S. 268, 271 (1951).

paid at the principal office of the Association in the city of Havana, Republic of Cuba, but the insured may, with the assent of the Association, make his payments elsewhere" (A. 29).

As was true of many of Confederation's policies under Cuba's pre-1951 dual currency regime, the Sanchez policy provided that payments under the policy should be made "in lawful currency of the United States of America" (A. 29), which was then one of Cuba's two currencies of legal tender status. On June 30, 1951, however, Cuba withdrew the legal tender status of the dollar and provided that all previously contracted dollar obligations payable in Cuba would be payable at the rate of one peso per dollar (A. 16-17, 46-47). This legislation, representing a traditional act of state with familiar precedents in this country (see p. 21, *infra*), converted the Sanchez policy from one payable in dollars to one payable in an equivalent number of pesos (A. 57).

In the next premium notice after June 30, 1951, Confederation notified its policyholders that, in accordance with the legislation, all premiums and all company obligations stated in policies in dollars "will from now on be payable in Cuban national currency at par" (A. 47). Sanchez did not terminate his policy but continued to pay premiums on it, and his premiums were thereafter paid entirely in pesos (A. 48). Both before and after that date all of Sanchez' premium payments were made in Cuba (*id.*).

The Government of Cuba was overthrown in January 1959 and a new Cuban Government under Fidel Castro was installed. Shortly thereafter, the United States recognized the Castro regime as the legitimate govern-

ment of that country and that recognition continues in effect today. By legislation in October 1959 and February 1961, the new Cuban Government reconfirmed and reinforced the 1951 legislation.[4] Based on the uncontroverted sworn testimony of the expert witness on Cuban law—a former Justice of the Supreme Court of Cuba who was stipulated to be "a recognized authority on Cuban law" (Tr. 35)—the Cuban legislation prohibits payment of the Sanchez policy by Confederation in any currency other than pesos and in any place other than Cuba; and it provides for severe criminal sanctions in the event of violations (A. 57).

Since 1951 Confederation has maintained in that country peso reserves sufficient to cover its obligations under Cuban policies (A. 48). Those reserves cannot under Cuban law be transferred to the United States, nor does the company maintain dollar reserves against Cuban policies (*id.*). Although it no longer writes insurance policies in Cuba, Confederation has maintained its Havana office to service policies previously written in that country by making payments in pesos there pursuant to Cuban law. Where the insured or beneficiary so desires, Confederation is willing and able to hold benefits now payable until requested to pay them to claimants.

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[4] The October 1959 law (A. 20-21) made any unauthorized transfer of funds abroad by any means "a felony of currency contraband" rendering guilty individuals liable to severe imprisonment and fines; companies found to violate the law were made subject to "intervention" which amounts to government seizure of the company. The law passed in February 1961 reconfirmed that pesos alone were legal tender in Cuba and said all obligations payable in Cuba, whether or not agreed upon in another currency, "shall be settled and paid necessarily" in Cuban currency (A. 19-20).

B. *The Present Suit.* When Sanchez died in 1962, Confederation advised that, pursuant to Cuban law, it was ready and willing to pay the required benefits in pesos in Havana, but that it was unable to transfer the funds to any other country (A. 54). Respondents, asserting that they were the beneficiaries under the Sanchez policy, thereafter brought the present suit in the Florida Circuit Court to require Confederation to pay the death benefits due under the policy in dollars in the United States (A. 1). The complaint identified the individual respondents as presently residing in California, Florida, and Havana (A. 1-2).

In its answer, Confederation asserted that Cuban law governed its obligations under the policy since the insurance contract was made in Cuba, insured the life of a Cuban domiciliary, and was expressly performable in Cuba (A. 7). Since the company was prepared to perform its obligations as defined by Cuban law, no breach of contract existed (A. 8). The company asserted that for a Florida court to enlarge the company's obligations as defined by Cuban law would represent an application of local law to an entirely foreign transaction in violation of the Due Process Clause of the Fourteenth Amendment; and, by this action and by disregarding the operation of a Cuban currency law on a Cuban contract, Florida would involve the United States in a violation of international law and contravene the act of state doctrine enunciated by this Court (A. 13-15, 21-22).

Florida, under normal circumstances, follows the traditional "choice of law" rule in determining what substantive law is applicable in a contract suit: questions relating to the validity and effect of the contract are governed by the law of the jurisdiction where the

contract was made and questions respecting the details of performance are controlled by the law of the place where the contract was to be performed. *Restatement, Conflicts* §§ 332, 359 (1934); *Confederation Life Ass'n* v. *Ugalde,* 164 So.2d 1 (Fla. 1964), *cert. denied,* 379 U.S. 915 (1965); *Brown* v. *Case,* 80 Fla. 703, 86 So. 684 (1920). In the present case, of course, the contract was both made and performable in Cuba.

Thus, in the *Ugalde* case, the Florida Supreme Court held that a Confederation policy issued to a Cuban resident, similar to the one involved here, "was a Cuban policy covered by Cuban law" and that "the policy was converted from a policy payable in dollars to a policy payable in pesos" by the 1951 legislation previously described. 164 So.2d at 2. Since in *Ugalde,* as in this case, the company was prepared to perform its obligations "in accordance with the terms of the contract and the law of Cuba, which govern it, in Cuban pesos in Havana, there was no breach of contract and no cause of action" against the company. *Id.*

The outcome would be the same even if Florida followed the more recent "grouping of contacts" approach to choice of law questions.[5] In passing upon similar Confederation policies the federal courts in New York held, in giving judgment for Confederation, that Cuban law applied whether one looked to the traditional conflicts rule or the grouping of contacts test; and since "under that law, [Confederation's] . . .

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[5] This rule, now followed in New York and a number of other states, determines contracts issues, absent a choice of law by the parties to the contract, according to the law of the jurisdiction having "the most significant relationship" to the transaction and the contracting parties. *Restatement (Second), Conflicts* § 188 (1971); Leflar, *American Conflicts Law* § 96 (1959); *Auten* v. *Auten,* 308 N.Y. 155, 124 N.E.2d 99 (1954). Patently, the "most significant relationship" in a case such as this one is with Cuba.

obligation is to pay in pesos" which it stands ready to do, "it has not broken its contracts." *Johansen* v. *Confederation Life Ass'n,* 312 F. Supp. 1056, 1064 (S.D.N.Y. 1970), *aff'd,* 447 F.2d 175 (2d Cir 1971).[6] *Johansen* also pointed out after a detailed review of the pertinent Cuban law that Confederation properly maintained its reserves on Cuban policies in pesos in Cuba and could not convert them to dollars. Accordingly, to require payment in dollars would simply work a hardship on the company which, because it is a mutual company, would be borne by its policyholders. 312 F. Supp. at 1065.

C. *The Decisions Below.* Despite *Ugalde* and the settled Florida conflicts rule looking to the law of the place of contract and performance, the trial court in the present case granted judgment for the respondents requiring Confederation to pay them benefits under the Sanchez policy in dollars in the United States. The court relied principally upon *Confederation Life Ass'n* v. *Vega,* 207 So.2d 33 (Fla. Dist. Ct. App.), *aff'd,* 211 So.2d 169 (Fla.), *cert. denied,* 393 U.S. 980 (1968). There, the Florida courts applied local law to a Confederation policy issued in Cuba, but in that case the insured exercised a cash surrender option in Florida; the courts concluded that this constituted the making of a second contract *in Florida,* thus creating a purported basis for invoking Florida law under the tradi-

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[6] In language fully applicable to the Sanchez policy here involved, the District Court pointed out: "The contracts were made in Cuba. According to their terms they were to be performed in Cuba. Substantially all the contacts are Cuban. [The insureds] . . . were Cuban residents and domiciliaries. They paid their premiums in Cuba. The policies were enrolled on . . . [defendant Confederation's] Cuban register. Defendant's reserves on these policies were maintained in Cuba." 312 F. Supp. at 1063.

tional conflicts rule. 207 So.2d at 36-37. The present case, however, involves no exercise of a cash surrender option in Florida or anywhere else; and the reference to *Vega* makes sense only if the purported rationale of that case is disregarded and it is viewed in retrospect as a naked attempt to apply Florida law to a Cuban contract.[7]

The intermediate appellate court in Florida reversed the trial court on procedural grounds (p. 5a, *infra*), but the Florida Supreme Court reinstated the trial court's judgment (p. 7a, *infra*). Without legal analysis of any kind concerning the choice of law question, the Florida Supreme Court held that its *Vega* decision controlled the present case. It did not even pretend to find that any contract here had been made in Florida. In each court in the proceedings below, the federal questions raised by this petition were presented and in each instance they were ignored by the Florida courts.[8]

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[7] The trial court also referred to *Imperial Life Assurance Co. of Canada* v. *Colmenares*, [1967] Can. L. Rep. 447 (Sup. Ct.), where in construing a quite different insurance policy, issued by a different company, the court declined to apply Cuban law. Whereas in the present case the insurance contract was made in Cuba and was expressly performable there, the contract in *Colmenares* was found to have been made in Canada and premiums and benefits were expressly payable by bank draft drawn on New York. The decision accordingly has no relevance whatever to the present facts and the Florida Supreme Court in this case did not even refer to it.

[8] Confederation raised the federal questions in the Florida courts by its answer to the complaint (A. 13-15, 21-22) and its memorandum of law, pp. 11-13, in the Circuit Court; by its brief, pp. 36-45, in the District Court of Appeal; and by its brief on the merits, pp. 26-28, in the Florida Supreme Court. In each court Confederation argued that to apply the law of a jurisdiction other than Cuba to determine Confederation's rights and obligations under the Sanchez policy would violate the Due Process Clause of the Fourteenth Amendment, infringe international law, and contravene the act of state doctrine.

From the surrounding circumstances, it is now clear that the Florida courts will require Confederation to pay in dollars in the United States—at the rate of one dollar for each peso owing—all claims under the many similar Cuban policies it has issued that are still outstanding. Although such claims would fail in other jurisdictions under any accepted choice of law rule,[9] a vast number of former Cubans who have immigrated to this country reside in Florida; and, as the present complaint shows, residents of other states can readily travel to take advantage of the Florida courts. If the Florida court's decision goes unchecked and is taken to cover contracts expressed in Cuban pesos, the potential liability of Confederation alone is conservatively estimated at $15 million and may well be many millions of dollars more.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Violates the Fourteenth Amendment and Conflicts With Decisions of This Court Precluding States From Applying Local Law to Wholly Foreign Transactions.

One of the most fundamental limitations imposed by the Due Process Clause of the Fourteenth Amendment as interpreted by this Court is that forbidding any state to apply its local law to alter substantive obligations arising out of a foreign transaction having no significant relation to the state. *E.g., Clay* v. *Sun Ins.*

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[9] Every court apart from the Florida state courts which has considered a comparable claim against Confederation on one of its Cuban policies has held that Cuban law applies to determine the company's obligations. *E.g., Johansen* v. *Confederation Life Ass'n*, 312 F. Supp. 1056 (S.D.N.Y. 1970), *aff'd*, 447 F.2d 175 (2d Cir. 1971); *Ramil* v. *Confederation Life Ass'n*, Equity No. 88020, Mass. Superior Court, Dec. 22, 1971; *Santovenia* v. *Confederation Life Ass'n*, No. 70-688-Civ.-CA, S.D. Fla., Aug. 17, 1971, *appeal pending*, No. 71-2928, 5th Cir.

Office, Ltd., 377 U.S. 179 (1964); *Watson* v. *Employers Liability Assurance Corp.*, 348 U.S. 66 (1954); *Hartford Accident & Indem. Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143 (1934); *Home Ins. Co.* v. *Dick*, 281 U.S. 397 (1930). As these decisions make clear, it is not merely unjustifiable policy but a violation of the Constitution to apply local law where the state's relation to the transaction is "too slight and too casual, as in the *Delta & Pine Land Co.* case" or where it is "wholly lacking, as in the *Dick* case." *Clay* v. *Sun Ins. Office, Ltd., supra,* at 182 (footnote omitted).

In this aspect, the Due Process Clause serves "to bar hog-wild misapplications of any kind of irrelevant law to a set of extrastate facts." Leflar, "Constitutional Limits on Free Choice of Law," 28 *Law & Contemp. Prob.* 706, 707 (1963). By limiting application of local law to instances where the forum state has substantial if not predominant contacts with the transaction, the Due Process Clause serves to protect the contracting parties' interest in "fair play and substantial justice." *Id.* Beyond the interests of the parties, however, the restriction draws an outer boundary for a state's jurisdiction to "legislate" with respect to foreign transactions. See p. 15, *infra.*

In the present case, virtually every significant contact of the transaction is with Cuba: the policy was negotiated there and became effective there; it was to be performed there by its express terms; all premium payments were made in Cuba; the policy application and the policy were drawn in Spanish; their terms conformed to Cuban law; the policy was issued through the Havana office of Confederation and notarized in Cuba; assets to cover Confederation's policy obligations were maintained in Cuba; and the insured was a

Cuban citizen who lived throughout his life in Cuba, resided there when the policy was negotiated, and died in that country. See pp. 4-5, *supra.*

The Florida court's decision disregards the constitutional principle laid down by this Court and cannot be reconciled with *Home Ins. Co.* v. *Dick, supra.* There Dick, a citizen of Texas, brought suit in a Texas state court to recover on a policy insuring his vessel against loss while in Mexican waters. Dick's policy had been issued in Mexico by a Mexican company, protecting against loss which might occur there, and both premiums and loss were payable in Mexico. 281 U.S. at 403-04. A defense to liability existed under a one-year limitations clause in the policy which was valid if the law of Mexico governed the contract. Applying local law instead, the Texas courts held the insurer liable. Speaking for a unanimous Court, Mr. Justice Brandeis concluded that, given the close relationship of the transaction with Mexico and the absence of substantial contact with Texas, the Texas courts violated the Due Process Clause by applying Texas law.[10]

Due Process standards are not satisfied by Florida in this case simply because two of the six respondents have taken up residence in Florida (A. 1-2). Limitations on state authority to regulate foreign transactions would have little meaning if the complaining party could avoid them merely by coming into a state and

[10] 281 U.S. at 410. As the Court summarized: "All acts relating to the making of the policy were done in Mexico. . . . And, likewise, all things in regard to performance were to be done outside of Texas. . . . Texas was, therefore, without power to affect the terms of the contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." *Id.* at 408.

subjecting himself to its jurisdiction. In *Dick,* the insured's permanent residence at the time of suit was in Texas, and this Court deemed the fact "without significance" since the critical events all occurred in Mexico. 281 U.S. at 408. Certainly in the case of a life insurance contract "if domicile is to be determinative . . . it seems more logical to look at the domicile of the insureds themselves at the time they entered into the contracts, rather than to the domicile of the plaintiffs at the time of bringing suit." *Johansen* v. *Confederation Life Ass'n, supra,* 447 F.2d at 179. *Accord, Restatement (Second), Conflicts* § 192 (1971).

"No one suggests that the *Dick* case is wrong or is likely to be overruled." Leflar, *supra,* 28 *Law & Contemp. Prob.* at 717. On the contrary, as the widening scope of corporate operations makes individual companies amenable to suit in many jurisdictions, it becomes more critical to maintain such Due Process restraints against unwarranted intrusions into foreign transactions of local law that upsets parties' legitimate expectations. These checks are essential to afford fair and predictable treatment to individual litigants where a forum foreign to the transaction chooses to entertain suits upon it. Such checks are no less essential to avoid conflicts between states themselves in asserting regulatory authority over transactions beyond their borders.

The limit on a state's ability to "choose" its own law in deciding a civil suit is only one of a number of comparable limitations applied by this Court under the Due Process Clause in order to keep the exercise of state authority in proper bounds. Delimiting the measure of a state's power to reach beyond its borders to tax, to effect process and to forbid private conduct

has been one of the recurring responsibilities of this Court over many years.[11] In recent years, as in the past, this Court has been alert to police these outer limits, where states have approached them, as in *Clay* v. *Sun Life Ins. Office, Ltd., supra,* or exceeded them, as in *Norfolk & W. Ry.* v. *Missouri State Tax Comm'n,* 390 U.S. 317 (1968), and in this case.

The considerations of fairness which underlie the Due Process Clause and justify review in this case are enhanced here by several additional circumstances. The decision of the court below is, by any test, an illogical and unexplained departure from the traditional conflicts rules which the Florida courts have applied in the past (see pp. 7-8, *supra*) and which they have continued to apply contemporaneously with this case in disputes not involving Cuban insurance contracts. See, *e.g., State-Wide Ins. Co.* v. *Flaks,* 233 So.2d 400, 402 (Fla. Dist. Ct. App.), *cert. dismissed,* 238 So.2d 427 (Fla. 1970). This sequence of events, coupled with the refusal of the Florida Supreme Court even to comment upon the substantial federal questions presented to it, invites the inevitable suspicion that a foreign corporation is not receiving the even-handed justice that it has the right to expect in American courts.

This Court may also properly consider, in determining to grant plenary review of the substantial federal questions presented, that the present controversy is arising repeatedly in the American courts so that reso-

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[11] *E.g., Norfolk & W. Ry.* v. *Missouri State Tax Comm'n,* 390 U.S. 317 (1968) (state authority to tax foreign property); *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945) (personal jurisdiction of state over foreign corporation); *Allgeyer* v. *Louisiana,* 165 U.S. 578 (1897) (regulatory authority of state to prohibit extrastate conduct).

lution by this Court will be of great precedential importance. Confederation has estimated its outstanding liabilities to Cubans under Cuban policies as approximating $15 million and a far larger amount may ultimately be at stake; the Cubans who have immigrated to this country, now estimated to number approximately 400,000, necessarily include a very large number of insureds and beneficiaries. Suits involving Cuban insurance policy claims against Confederation alone, quite apart from suits involving other insurers, have already been litigated in state and federal courts (see, *e.g.,* p. 11, n. 9, *supra*) and many more are virtually inevitable.

Finally, no one can fairly predict what the Cuban Government will do in the event that, contrary to Cuban law, Confederation is compelled to discharge Cuban obligations, payable in pesos in Cuba, through the payment of dollar judgments in the United States. The fact remains that Confederation has been responsibly advised by an expert in Cuban law that Cuba prohibits dollar payments of the Cuban obligations here involved (A. 57), and the company has both assets and employees in Cuba that are subject to the severe sanctions applicable under Cuban law for acts that government construes as violating its currency restrictions. See p. 6, n. 4, *supra.* This Court has previously deemed it an important element weighing in favor of review that the decision below required a party to violate foreign law. *Societe Internationale* v. *Rogers,* 357 U.S. 197, 211-12 (1958).

II. The Lower Court's Decision Involves the United States in a Violation of International Law and Thus Infringes the Authority of the Federal Government Over Foreign Affairs.

The improper application of Florida law in the present case not only violated the Fourteenth Amendment but involved the United States in a breach of international law. International law is violated when courts prejudicially alter the rights and obligations of a foreign national arising out of a transaction having little or no substantial contact with the forum state. See *Restatement (Second), Foreign Relations Law of the United States* § 19 & comment d (1965). The facts already described show that the transaction in this case had a close and extensive relationship to Cuba and no connection at all with Florida, and they also establish that the rights of Confederation under Cuban law have been abrogated by the lower court's decision.

The principle that foreign contract rights cannot be abrogated by local courts has been asserted by the United States Government in espousing a claim on behalf of American citizens. *The Alsop Claim (United States* v. *Chile),* 5 *Am. J. Int'l L.* 1079 (1911). In that case, the United States contended before an arbitral tribunal that Chilean courts improperly deprived a company owned by American citizens of its rights under a Bolivian contract by applying Chilean rather than Bolivian law to suits brought on the company's behalf. The United States asserted that the Government of Chile was liable in damages for the acts of its courts in applying Chilean law, notwithstanding that

Chile had in the meantime occupied the area of Bolivia where the contract rights were to be exercised.[12]

By injuring a foreign national through a violation of international law, "the court commits an international delict and subjects the State to diplomatic representations or the possible award of damages or other reparation by an international tribunal." Stevenson, "The Relationship of Private International Law to Public International Law," 52 *Colum. L. Rev.* 561, 574 (1952) (footnote omitted); 5 Hackworth, *Digest of International Law* § 522 (1943); Briggs, *The Law of Nations* 677-80 (1952). As already noted, the United States has itself sought reparations for American citizens where another nation's courts abrogated vested contract rights arising under foreign law.

It is no defense to claims against the United States that the injury was done by a state rather than a federal court since under international law the conduct of a political sub-unit in causing injury to an alien is "attributable" to the national government. *Restatement (Second), Foreign Relations Law of the United States* § 170 (1965); 5 Hackworth, *Digest of International Law* § 527 (1943). Indeed, it is the responsibility of the United States for Florida's action under international law, and the adverse consequences of that action upon the conduct of foreign affairs by the United States, that make that action a matter of direct federal concern and accordingly render it subject to overriding federal law. *Zschernig* v. *Miller,* 389 U.S. 429 (1968);

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[12] U.S. Dep't of State, *The Alsop Claim—The Case of the United States* 198-220 (GPO 1910). The claim failed in that instance on several grounds, but the tribunal did not question the principle asserted by the United States. See 5 *Am. J. Int'l L.* at 1097.

Banco Nacional de Cuba v. *Sabbatino,* 376 U.S. 398 (1964).[13]

In the *Zschernig* case this Court held that the Oregon courts' application of state inheritance statutes to interfere with claims of citizens of "iron curtain" countries represented an impermissible "state involvement in foreign affairs and international relations—matters which the Constitution entrusts solely to the Federal Government . . . ." 389 U.S. at 436. There, this Court disallowed the state's action because of the "persistent and subtle" effect on international relations of the inquiry conducted by the state court, 389 U.S. at 440, and its potential for embarrassment of the Federal Government. In the present case, there is not merely a subtle effect on the conduct of international relations by the Federal Government but a violation of international law, and the United States is not merely embarrassed but made subject to legal liability through diplomatic or arbitral channels.

When courts in this country improperly extend local law to regulate foreign transactions, they establish a precedent no less applicable to Americans in foreign courts. As this Court said in *Lauritzen* v. *Larsen,* 345 U.S. 571, 582 (1953):

> "[I]n dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a

[13] Where the interests of the United States are affected by state action, it is well settled that federal law is pre-emptive, both where the United States is a party to the suit, *Clearfield Trust Co.* v. *United States,* 318 U.S. 363 (1943), and where the suit is between private parties, *Howard* v. *Lyons,* 360 U.S. 593, 597 (1959).

> foreign transaction will logically be as strong a warrant for a foreign country to apply its law to an American transaction."

Thus, protection of the rights of foreign nationals under international law, when those nationals are subjected to litigation in American courts, serves not only the interests of the Federal Government but also those of the citizens of this country.

III. Florida Has Acted Inconsistently With This Court's Act of State Doctrine, Which Is Binding on Both State and Federal Courts, by Disregarding the Effect of Cuban Currency Legislation on a Cuban Contract.

Quite apart from the violation of international law, the decision of the Florida Supreme Court conflicts with the act of state doctrine recently reaffirmed by this Court in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964). Under that doctrine an American court may not in the course of deciding a controversy re-examine, nullify or disregard an act of state of a recognized foreign government so far as that act has determined rights or obligations which are subject to its jurisdiction. This Court has said that under the governing principle "when it is made to appear that a foreign government has acted in a given way on the subject-matter of the litigation, the details of such action or the merits of the result cannot be questioned but must be accepted by our courts as a rule for their decision." *Banco Nacional de Cuba* v. *Sabbatino*, *supra*, at 418, quoting *Ricaud* v. *American Metal Co.*, 246 U.S. 304, 309 (1918).

In this instance, the legislation of the Cuban Government, depriving the dollar of legal tender status in Cuba and converting dollar obligations payable in Cuba into peso obligations, was certainly an act of

state of the most traditional kind. In a mirror image of the Cuban legislation, Congress provided in the Foraker Act § 11, 31 Stat. 77, 80 (1900), for the substitution of United States dollars for Puerto Rican pesos after that province was ceded to the United States, and existing peso obligations in Puerto Rico were thereby converted into dollar obligations at the ratio provided in the statute. This Court approved the Foraker Act's application to a pre-existing contract in *Sherralles' Succession* v. *Esbri,* 200 U.S. 103 (1906), and that case is only one of a number of decisions throughout the years confirming that this and comparable currency legislation are conventional exercises of national legislative authority.[14]

The Cuban legislation in this case operated upon contractual obligations arising under Cuban law, performable in Cuba and relating to insurance upon the life of a Cuban national. The act of state doctrine is no less applicable because the legislation of the Cuban Government was directed to contractual interests arising under local law rather than to tangible personal property located within the territory.[15] As the court

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[14] *Guaranty Trust Co.* v. *Henwood,* 307 U.S. 247, 258-59 (1939); *Norman* v. *Baltimore & O. R.R.,* 294 U.S. 240, 307-08 (1935); *Legal Tender Cases,* 79 U.S. (12 Wall.) 457, 548-49 (1870). As the Court said in the *Legal Tender Cases:* "Every contract for the payment of money, simply, is necessarily subject to the constitutional power of the government over the currency . . . and the obligation of the parties is, therefore, assumed with reference to that power." 79 U.S. (12 Wall.) at 549.

[15] The act of state doctrine is fully applicable to acts of state which affect intangible commercial rights, *e.g., American Banana Co.* v. *United Fruit Co.,* 213 U.S. 347 (1909) (unfair competition), and rights having no relation to property at all, *e.g., Underhill* v. *Hernandez,* 168 U.S. 250 (1897) (false imprisonment). The *locus classicus* of the act of state doctrine, *Blad* v. *Bamfield,* 3 Swans. 604, 36 Eng. Rep. 992 (1674), cited in *Sabbatino, supra,* 376 U.S. at 416, involved contract claims.

said in *Johansen,* "The 1951 Cuban law in effect changed the contract from a dollar contract to a peso contract." 312 F. Supp. at 1063.

Under the act of state doctrine Florida is not entitled to disregard the operation of Cuban legislation on Confederation's Cuban contractual obligations. While the Florida courts need not entertain claims such as this one arising under contracts made abroad, when they choose to do so the pertinent foreign act of state "cannot be questioned but must be accepted by our courts as a rule for their decision." *Banco Nacional de Cuba* v. *Sabbatino, supra* (quoted p. 20, *supra*). Patently, in this case the Florida courts did not accept the Cuban currency legislation as controlling the insurer's obligations under the contract.

Upon both principle and policy, the present case is governed by *Sabbatino.* Thus, in *Sabbatino* the lower court was compelled to recognize that a Cuban act of state had by expropriation transferred ownership of property then located in Cuba, even though the property was subsequently shipped abroad and made the subject of suit in this country; similarly, in this instance the Florida courts were compelled to recognize that a Cuban act of state had converted contract claims of a Cuban citizen arising under Cuban law from dollar to peso obligations, even though those claims

were thereafter made the subject of suit in American courts.[16]

The act of state doctrine derives, as the Court made clear in *Sabbatino,* not from international law but from the constitutional responsibility of the federal executive and legislative branches to conduct foreign relations. 376 U.S. at 421-24. The opinion makes equally clear that the constraints of the act of state doctrine are as binding upon the state courts as upon federal ones. *Id.* at 424-27. The actions of the Florida courts in this case dramatically illustrate the very dangers which this Court foresaw in *Sabbatino* as justifying the act of state doctrine, and the present case is equally deserving of plenary review in this Court.

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[16] Following the *Sabbatino* decision, Congress passed the Hickenlooper Amendment, which made the act of state doctrine inapplicable in the case of confiscations or takings in violation of international law, 22 U.S.C. § 2370(e)(2)(1970), but which otherwise left the doctrine unaffected, S.Rep. No. 1188, 88th Cong., 2d Sess. 24 (1964). The Amendment has no application here, since "a currency regulation which alters either the value or character of the money to be paid in satisfaction of contracts is not a 'confiscation' or 'taking.'" *French* v. *Banco Nacional de Cuba,* 23 N.Y.2d 46, 55, 242 N.E.2d 704, 710 (1968). In addition, the conversion of the claims here from dollar to peso claims occurred in 1951, as the company recognized in its premium notices, and the Hickenlooper Amendment applies by its terms only to confiscations and takings "after January 1, 1959."

CONCLUSION

For the reasons stated above, the writ of certiorari should be granted.

Respectfully submitted,

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May 1972

APPENDIX

APPENDIX

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

No. 67-10571

HECTOR DE LARA, ET AL, *Plaintiffs*,

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Defendant*.

Final Judgment and Decree

THIS CAUSE having come on for hearing and the Court having read the pleadings, and examined the exhibits, and having heard the testimony of the witnesses, and having had an opportunity to observe their demeanor and evaluate their testimony, and the Court having been advised by counsel for the respective parties, and being of the opinion that a Final Judgment and Decree should be entered in this cause, the Court hereby makes findings of fact, draws conclusions of law, and enters Final Judgment and Decree as follows:

FINDINGS OF FACT

1) The Plaintiffs are the heirs at law of German Lopez Sanchez, deceased.

2) The life of German Lopez Sanchez was insured by the Defendant under its policy No. 494 684, insured May 4, 1938. The said policy was issued by the Defendant at its home office in Toronto, Canada, pursuant to an application made by German Lopez Sanchez. German Lopez Sanchez was a resident of Cuba at the time the policy was issued and until his death on June 8, 1962. The Defendant is a corporation under the laws of Canada whose principal place of business is in Toronto, Canada. The Defendant is authorized to do business in the State of Florida.

3) The insurance policy in question is in Spanish. A translation was introduced in evidence. The policy provides in pertinent part as follows:

> PLACES OF INTEREST: All amounts payable or receivable under this policy shall be paid at the chief office of the Association in the city of Havana, Republic of Cuba, but the insured may, with the consent of the Association, make payment elsewhere.
>
> CURRENCY: All amounts payable or receivable under this policy shall be paid in lawful currency of the United States of America."

4) On October 31, 1962, a written demand for payment in dollars in the United States under the policy was made by the Plaintiffs on Defendant. Defendant has refused to pay except in Cuban pesos in Havana.

5) The parties Plaintiff with the exception of Rosalia Lopez Orue are all now resident in the United States. Rosalia Lopez Orue has assigned her interest in the policy to the Plaintiffs resident in the United States by written document which was introduced in evidence.

6) The parties Plaintiff residing in the United States are political refugees from Cuba and are now unable to return to Cuba without personal risk to themselves.

CONLUSIONS OF LAW

1) This action is properly brought in this Court inasmuch as it is an action on an insurance contract which is transitory and which can be begun wherever service on the Defendant can be perfected. *Confederation Life Assoc.* v. *Vega,* 135 S. 2nd 867 (3 DCA Fla. 1962). The defense of *forum non conveniens* is not applicable to Defendant.

2) This case is governed by the principles laid down in *Confederation Life Assoc.* v. *Vega,* 207 So. 2nd 33 (3 DCA

Fla. 1968), and this Court in equity has the power to grant to the Plaintiffs recovery in United States dollars. In that connection, the Court notices and adopts that portion of the Opinion in *Confederation Life Assoc.* v. *Vega,* which provides:

> "In the instant case there is no doubt that the plaintiff would have an absolute right to a meaningful recovery were it not for the revolution in Cuba * * * Applying the maxim that equity looks at the substance rather than the form of the transaction and since the primary purpose of this transaction is the payment of the cash surrender value of the policy after a period of twenty years, and the provision of payment being made in Havana is merely for the convenience of the parties, there is no equitable reason why the plaintiff should not recover."

In the Opinion of the Court, the principles above stated govern this case. The distinction made by the Defendant here that the *Vega* case relates to payment of cash surrender value, whereas this case relates to the payment of the death benefit is a distinction without substantial difference. This Court has power to grant Plaintiffs a meaningful recovery.

3) Assuming that the argument made by the Defendant that the *lex loci contractus* governs is valid, the result would be the same. The Court finds that the place of making of the contract was Toronto, Canada, and that the *lex loci contractus* is Canadian law which would govern this Defendant (which is a Canadian corporation having its principal place of business in Toronto). The Supreme Court of Canada in the case of *Imperial Life Assurance Co. of Canada* v. *Segundo Casteleiro y Colmenares,* copy of which Opinion is filed in this cause, specifically held that the Canadian law governs a factual situation virtually on all fours with the situation in this case and thus the Cuban law urged by the Defendant does not govern the case at bar.

WHEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1) The foregoing recitals, findings of fact, and conclusions of law be and they hereby are incorporated into the decretal portions of this Judgment.

2) This Court has jurisdiction of the parties and of the subject matter of this cause.

3) The equities of this cause are with the Plaintiffs and against the Defendant.

4) The Motions for Summary Judgment made by the Defendant, and which were by consent of the parties, to be heard and determined along with the cause itself on final hearing be and the same are hereby denied.

5) The Defendant be and it hereby is ordered to pay to the Plaintiffs, including the assigns of Rosalia Lopez Orue the sum of $10,000 plus bonuses and interest from October 31, 1962; the amount of said bonuses and interest to be fixed by subsequent Order after notice and hearing.

6) Shalle Stephen Fine, as attorney for the Plaintiffs, be and he hereby is awarded attorney's fees in an amount to be fixed by subsequent Order after notice and hearing.

7) The Plaintiffs are hereby awarded costs in this cause in an amount to be taxed by subsequent Order after notice and hearing.

8) The Court retains jurisdiction over this cause for the purpose of making such subsequent Orders taxing costs, setting attorney's fees and fixing the amount of bonuses and interest as are hereinabove referred to.

DONE AND ORDERED at the Courthouse at Miami, Dade County, Florida, this 23rd day of September, 1969.

MARSHALL C. WISEHEART
Marshall C. Wiseheart,
Circuit Judge

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 1971

CASE No. 70-258

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Appellant*,

v.

HECTOR DE LARA, ET AL., *Appellees*.

Opinion filed January 26, 1971.

An Appeal from the Circuit Court for Dade County, Marshall C. Wiseheart, Judge.

Shutts & Bowen and Phillip G. Newcomm, for appellant.

Shalle Stephen Fine, for appellees.

Before PEARSON, C.J., and HENDRY and SWANN, JJ.

Opinion

PER CURIAM.

Defendant, Confederation Life Association, a Canadian insurance company, appeals from a final decree for the appellees, who were the plaintiffs below.

The plaintiffs brought an action against the insurance company in the Circuit Court of Dade County, Florida. They alleged that they were beneficiaries of the proceeds of a life insurance policy which the insurance company had issued on the life of one German Lopez Sanchez.

The complaint sought relief which could be characterized as "equitable" and "legal". The final decree found that the equities were with the plaintiffs and under the principles of Confederation Life Association v. Vega y Arminan, Fla.App.1968, 207 So.2d 33, Cert. discharged, Fla.1968, 211 So.2d 169, ordered the insurance company to pay plaintiffs

the sum of Ten Thousand Dollars plus bonuses and interest from October 31, 1963.

On appeal there is a difference of opinion between the parties as to whether plaintiffs were seeking legal or equitable relief in the trial court. Plaintiffs argue that they were seeking and obtained specific performance of the insurance contract in question.

An examination of the complaint shows that it did not contain any allegation that plaintiffs were without a plain adequate and complete remedy at law. See 29A Fla.Jur. Specific Performance § 14. Neither is there proof that plaintiffs had an inadequate or incomplete remedy at law. Cf. Confederation Life Association v. Vega y Arminan, Fla.App.1968, 207 So.2d 33, P. 35. We hold, therefore, that plaintiff's action was not in the posture of Vega, supra, and this action was not controlled or governed by the equitable principles pronounced therein.

The final decree herein appealed is

Reversed.

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A.D. 1971

CASE NO. 40,957

DISTRICT COURT NO. 70-258

HECTOR DE LARA, JR., ET AL., *Petitioners*,

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Respondent*.

Opinion filed December 1, 1971.

Writ of Certiorari to the District Court of Appeal, Third District.

Shalle Stephen Fine, for Petitioner.

Shutts & Bowen, Thomas H. Anderson and Phillip G. Newcomm, for Respondent.

Opinion

ERVIN, Acting Chief Justice

We have for review on petition for writ of certiorari a decision of the District Court of Appeal, Third District. Confederation Life Association v. deLara, Fla.App.1971, 244 So.2d 539. We have jurisdiction under Article V, Section 4(2) of the Florida Constitution because this decision conflicts with Confederation Life Association v. Vega, Fla. App.1968, 207 So.2d 33, which opinion was adopted by this Court in Confederation Life Association v. Vega, Fla.1968, 211 So.2d 169.

This is another case arising out of attempts to recover in the United States in United States dollars the face amount of life insurance policies sold in Havana, Cuba, to Cuban nationals.

In 1938, Respondent, a Canadian life insurance company authorized to do business in Cuba and in Florida, insured for $10,000 the life of one German Lopez Sanchez, a Cuban

national living in Havana. The insurance policy was applied for, and delivered, in Cuba. It contained the following pertinent provisions:

> "PLACES OF PAYMENT.—All sums payable or exigible under this policy shall be paid at the principal office of the Association in the City of Havana, Republic of Cuba, but the insured may, with the assent of the Association, make his payments elsewhere.
>
> "CURRENCY.—All sums payable or exigible under this policy shall be paid in lawful currency of the United States of America."

Following the enactment of a new Cuban law on July 1, 1951, the Association notified its insured that:

> "All premiums payable in accordance with this policy as well as all other liabilities contracted under the same and in which a reference is made to American currency, will from now on be payable in Cuban National currency, at par, in accordance with Law No. 13 of 1948 and Decree No. 1384 of April 1951."

The insured died on June 8, 1962, leaving Petitioners as his beneficiaries under the policy. All the Petitioners with the exception of Rosalia Lopez Orue now live in the United States. Petitioner Orue has assigned her rights to the proceeds to the other beneficiaries. After the insured's death, Petitioners filed their claim for the policy's benefits, requesting payment in the United States in United States dollars. Respondent advised them it would only pay them in Cuba in Cuban pesos.

Petitioners filed suit in the Dade County Circuit Court for the face amount of the policy plus interest and bonuses. In his Final Judgment, the trial judge concluded:

> "This case is governed by the principles laid down in Confederation Life Assoc. v. Vega [citation omitted] *and this Court in equity has the power to grant to the Plaintiffs recovery in United States dollars. . . .*"

On appeal, the Third District Court reversed. That court said:

> "The complaint sought relief which could be characterized as 'equitable' and 'legal.' The final decree found that the equities were with the plaintiffs and under the principles of Confederation Life Association v. Vega y Arminan [citation omitted] ordered the insurance company to pay plaintiffs the sum of Ten Thousand Dollars plus bonuses and interest from October 31, 1963.
>
> "On appeal there is a difference of opinion between the parties as to whether plaintiffs were seeking legal or equitable relief in the trial court. Plaintiffs argue that they were seeking and obtained specific performance of the insurance contract in question.
>
> "An examination of the complaint shows that it did not contain any allegation that plaintiffs were without a plain, adequate and complete remedy at law. See 29A Fla. Jur. Specific Performance § 14. Neither is there proof that plaintiffs had an inadequate or incomplete remedy at law. Cf. Confederation Life Association v. Vega y Arminan [citation omitted]. We hold, therefore, that plaintiff's action was not in the posture of Vega, supra, and this action was not controlled or governed by the equitable principles pronounced therein."

We are unable to agree with the District Court's conclusion relative a supposed pleading defect in respect to Petitioners' seeking an equitable remedy in the trial court. Distinctions between "equitable" and "legal" remedies are not favored in modern practice and belong to a bygone day. They are not present in our modern Rules of Civil Procedure. Rule 1.040, F.R.C.P. See also, authors' comment to the Rule in 31 FSA. The trial court clearly recognized the complaint sought equitable relief and granted it.

The problem set forth in the complaint was obvious and, as alleged, was in and of itself a predicate for equitable relief. The relief sought in the complaint was payment to the Petitioners of the policy benefits in the form of United States dollars in the United States, not Cuban pesos paid in the City of Havana, Republic of Cuba. Obviously, under outmoded rules of practice the policy, as subsequently unilaterally modified by the insuror as to the currency to be paid and place of payment, could not be read to afford Petitioners meaningful substantial equity relief in an ancient law action. But our trial courts are no longer so restricted and may treat a complaint as an equitable action, if such is the obvious purpose. Specific performance was here sought seeking payment in United States dollars.

The trial judge properly considered the instant situation as falling within the ambit of the rationale of Confederation Life Association v. Vega, supra. He recognized that the international situation has not materially changed since the rendition of the Vega decision. He well knew Cuban nationals who are refugees in the United States are still severely handicapped in their free access to visit, trade or conclude business matters in Cuba in Cuban currency, or with resident Cuban citizens or business concerns therein. Moreover, he knew the insuror was a Canadian corporation which was subject to liability, both in Canada and in the United States for its obligations under its issued life insurance policies, and that the original policy provided for payment in United States dollars.

Accordingly, we believe the rule in the Vega case is clearly applicable here and we so hold.

The decision of the District Court is quashed and the cause is remanded with instructions to reinstate the order of the trial court.

It is so ordered.

Boyd, McCain and Dekle, JJ., and Spector, District Court Judge, concur.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A.D. 1972
TUESDAY, FEBRUARY 15, 1972

CASE No. 40,957

HECTOR DE LARA, JR., ET AL., *Petitioners,*

v.

CONFEDERATION LIFE ASSOCIATION, a Canadian corporation, *Respondent.*

Order Denying Petition for Rehearing

On consideration of the Petition for Rehearing filed by attorneys for Respondent,

IT IS ORDERED by the Court that said Petition be, and the same is hereby, denied.

cc: HON. WILLIAM P. CARTER, *Clerk*
HON. E. B. LEATHERMAN, *Clerk*
HON. SHALLE STEPHEN FINE
MESSRS. SHUTTS & BOWEN

A True Copy

TEST:

SID J. WHITE
Sid J. White
Clerk Supreme Court.